

# Day 1: Dispute Resolution Process in Asia

## Session I: Dispute Resolution Process in Asia: Theory and Reality Discussions in Session I

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## **Discussions in Session I**

As social and economic conditions drastically change, Asian countries face challenges to establish systems for fairly and effectively resolving the variety of disputes that arise increasingly in our societies. For dispute resolution, litigation in the court is not the only option. Mediation and arbitration proceedings outside the courts are important facilities as well. In addition, administrative organs and private organizations such as bar associations function as resolution systems for dealing with the increasing number of disputes. While discussions on out-of-court dispute resolution systems are not conclusive, a wide range of ADR facilities have been established and used actively in practice. The purpose of some ADR is to mitigate the backlog in courts, while others are intended to bring about less costly and speedier resolutions than courts do. In addition, people may find in ADR the opportunities to resolve disputes that are technically difficult to bring to court.

In order to capture the entire picture of dispute resolution systems, a comprehensive analysis of both the in- and out-of-court dispute resolution processes is essential. Country presentations on the first day of the Meeting gave a comparative study of the current situation of dispute resolution processes in the courts as well as ADR in Asian countries.

The first issue discussed in the first session was whether Asian countries would be able to provide a forum that parties would turn to for dispute resolution. There is a Regional Arbitration Centre in Kuala Lumpur, which provides arbitration for disputes arising from cross-border transactions in Asia; however, the rate of access to the center by Asian parties is considerably low. It was pointed out that even in disputes between Asians, parties tended to choose arbitration in Western countries and by Western arbiters. This is because the Western system is believed to have more trustworthy and transparent procedures. In order to determine the reasons, the importance of a comparative study on arbitration in Asia was stressed. It would be helpful to discover the extent to which Asian people are using our own arbitration

centers in Asian countries versus their use of Western arbitration and arbiters instead. While Singapore International Arbitration Centre has been relatively successful, Japan Commercial Arbitration Association has dealt with very few cases. Although Asian countries imported or adopted the systems from the West, how the systems function depends upon how the systems have developed in the respective Asian countries. Through comparative study, we will be able to find how to promote Asia as arbitration centers.

The second issue is the role of the judiciary. In a comparison of judicial systems and alternative dispute resolution systems, how they are used depends upon whether the people trust judges in the respective countries. Further, the judges assume the role not only of adjudicator but also arbiter or mediator since there have been a variety of dispute resolution systems such as arbitration or mediation in courts. One speaker pointed out the problems in the fusion of roles between the formal adjudication and other dispute resolution systems. There is a danger that the roles of the judiciary and the executive will be confused. Another speaker argued that any person in Asian countries who holds power is respected and that this tends to give the starting point of corruption. She also stressed the need to change this cultural perception and habitat. This issue is relevant to the first question regarding why arbitration in Asia is not popular. A speaker explained that Japanese people's confidence in the courts was the reason for the low usage of arbitration. Another comment was that an alternative to the court system or administrative institutions could be community-based conciliation, rather than resorting to state-based or bureaucratic systems. Learning from Asian traditional methods of dispute resolution was suggested. The session was concluded with the remark that in order to have appropriate dispute resolution, it would be desirable for litigation, arbitration and other systems to compete for obtaining users in terms of cost and quality.